

Sent by email only to advocacy@sra.org.uk

12 November 2019



Dear Sir/Madam

Consultation: Assuring advocacy standards

The Legal Services Consumer Panel (the Panel) welcomes proposals for improving how the Solicitors Regulation Authority (SRA) regulates advocacy standards in civil and criminal work. The benefits of improvements for consumers include bolstering confidence in the quality of advocacy services and empowering consumers with the knowledge of what they can expect from their advocate.

We are pleased to see the SRA emphasise the importance of client care in standards. However, we expected to see more focus on consumers' experience in the research that informed this set of proposals. This might include conducting surveys of users.

The SRA starts by outlining why it is concerned about standards of advocacy, then goes on to note five research reports which highlighted and raised concerns about the quality of advocacy. The SRA also referred to its own qualitative research which found that two thirds of the judges interviewed said that it was common practice for advocates to take cases beyond their levels of expertise.

However, in other sections of the consultation document, the SRA states that most of the evidence available is anecdotal and that it has struggled to obtain evidence. To bolster this point, the SRA said it has not received many reports of poor advocacy from judges and the courts. But the consultation also goes on to highlight significant lack of awareness and confidence in reporting poor advocacy. The reader is left with no clear stance on whether the SRA believes that there is a problem to address. And perhaps as a consequence, the proposals are not appropriately targeted.

The Panel considers the problems in this area to be:

- There is not enough research, including with consumers, and it does not seem to be applied adequately to standards development.
- Consumers lack clear standards to know what quality advocacy is and what they should expect from an advocate in terms of service quality, technical knowledge and advocacy skills.
- Without clear standards, providers do not know what they should be delivering in terms of customer service, legal knowledge and advocacy skills. They do not understand clearly enough that they can be called to account for falling short of standards, for example by taking on cases they lack the legal knowledge to do effectively

- Judges have no clear guidance on what to do when they see poor advocacy that needs to be addressed and are probably not clear what their responsibility is to ensure standards are being met.

In light of the problems described above, careful consideration must be given to setting standards at an appropriate level to ensure all advocates know they must deliver a minimum standard of service for consumers, but not so high as to become a barrier to talented advocates building their experience. Moreover, standards must be monitorable and pragmatic ways must be found to monitor them that do not rely solely on self-assessment. And as well as entry requirements, ways to ensure ongoing competence must feature in the standards, including monitoring. On balance, we do not think the SRA has addressed the current failings robustly enough.

As noted above, we are concerned by assertions in the consultation paper that there are advocates who appear in cases that are beyond their competence. The SRA notes that it forbids advocates from practising outside their competence, but it does not outline how it monitors or measures this. Equally concerning, the SRA states that it will continue to rely on solicitors making self-assessment on their competence, with no external oversight.

For a long while, a striking feature of the existing quality assurance arrangements for advocates is the emphasis on entry requirements to safeguard quality, with little emphasis on assessing ongoing competence. The current proposal remains limited in this regard. There is also a missed opportunity around measuring quality. It will be vital to ensure this process is informed by client feedback, for example by learning from complaints and thinking creatively about ways to survey users.

Reflections on the consultation questions.

Do you agree with our proposal not to change existing practice rights, and to rely on the obligation on solicitors not to undertake witness handling where they are not competent to do so?

The Panel disagrees with the SRA's position. We start from the premise that there is a problem with advocacy that must be addressed. While we accept that there may not be significant numbers of advocates who are inadequate, we consider the potential detriment of even a minority of poor advocates to be so significant and life changing as to require robust regulatory intervention.

Therefore, we consider it completely appropriate for the SRA to stipulate that any advocate who wishes to work in the Magistrates Court and upwards should be assessed in witness handling.

We do not agree that a solicitor should be able to self-assess their competence in this regard. While we agree that witness handling assessment at the Solicitors Qualifying Exam (SQE) stage may be disproportionate, as not all would choose to practice criminal law, we believe that those who choose to practice criminal law, after the SQE, should be assessed as qualifying in witness handling.

What is likely to be at stake is too significant, particularly when one considers the vulnerability of those who may find themselves in the Magistrates Court.

Do you have any comments on our revised HRA standards?

No.

Do you agree that we should introduce a single assessment organisation for the HRA qualification?

Yes. We are convinced by the SRA's analysis and we agree that a company offering the training should not also be the assessor.

Do you agree with our proposal that the HRA assessment can only be attempted by admitted solicitors?

Yes, we agree with the SRA's rationale and analysis.

Do you agree that we should impose a new youth courts requirement that solicitors practising in the youth courts must hold the criminal HRA qualification where they are acting as an advocate in any case which would go to the crown court if it involved an adult?

The Panel is of the strong opinion that the SRA should impose a new requirement that solicitors practising in the youth courts must hold the criminal HRA qualification where they are acting as an advocate, even where similar cases for adults would not go to the crown court. We believe that the vulnerability of young people requires this specification.

Would you find it helpful to have access to a suite of resources aimed at supporting practitioners meet high advocacy standards?

N/A

Are there particular topics you would like to see included in our advocacy resources?

N/A

Do you agree with our proposals to support reporting? Do you have other suggestions about how we might improve our reporting processes?

We agree with the SRA's proposals. It would be useful if the SRA set a timeframe for when it would review whether its proposals to support reporting have been effective.

Do you have any further information to help inform our impact assessment?

No.

I hope you find these comments helpful. Please contact Lola Bello, Consumer Panel Manager, with any enquiries.

Yours sincerely,

A handwritten signature in black ink that reads "S Chambers". The signature is written in a cursive, flowing style.

Sarah Chambers

Chair

Legal Services Consumer Panel